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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

BRUCE SONG,

Plaintiff and Appellant,

v.

ANWAR TABBA et al.,

Defendants and Respondents.

B270089

(Los Angeles County  
Super. Ct. No. BC524224)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael J. Raphael, Judge. Affirmed.

Law Office of Chad Biggins and Chad Biggins for Plaintiff and Appellant.

Law Office of Michael A. Younge and Michael A. Younge for Defendants and Respondents.

Bruce Song (appellant) appeals from a judgment entered after the trial court granted a motion for judgment on the pleadings filed by defendants and respondents Anwar Tabba, Laraib Tabba, and Rehana Anwer (respondents) without leave to amend. The motion was granted on the ground that appellant lacked standing to pursue the matter. We find no error and affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

American Active West, Inc. (AAW) obtained a judgment against respondent Anwar Tabba in November 2008. An abstract of judgment was recorded on April 21, 2009. Some time thereafter, AAW went out of business and assigned its judgment to appellant in partial satisfaction of a debt owed to appellant.

On October 11, 2013, appellant filed a complaint against respondents to set aside fraudulent transfer. Respondents filed a demurrer based on appellant's lack of standing, which was sustained with leave to amend.

On February 7, 2014, appellant filed his first amended complaint (FAC) against respondents alleging fraudulent transfer. The FAC alleged that on January 24, 2008, while the AAW matter was pending, Anwar Tabba quitclaimed his interest in property located at 12126 Front Street, Norwalk, California, to his wife Rehana Anwer for no consideration. According to the FAC, the transfer was made knowingly and fraudulently for the purpose of hiding the asset from creditors such as AAW. The FAC further alleged that on March 16, 2010, Rehana Anwer transferred the property to respondent Laraib Tabba, the son of Anwar Tabba and Rehana Anwer, for no consideration, in order to further the fraud. Appellant alleged that respondents concealed and misrepresented their activities to prevent appellant from discovering their deceptive conduct.

In March 2014, respondents filed a demurrer to the FAC on the issue of standing. On April 1, 2014, appellant filed his opposition, arguing that although there was no evidence that the judgment was assigned from AAW to appellant, the court must take the pleading as truthful, and the pleading alleged that the assignment occurred. On April 15, 2014, the trial court overruled the demurrer to the FAC.

On September 29, 2014, appellant's attorney filed a document captioned "Assignment of Judgment" acknowledging and affirming assignment of the November 2008 judgment from AAW to appellant.

In October 2014, the parties entered into a stipulation. They agreed that a professional appraiser would appraise the real property at issue and determine whether there was any equity in the property as of January 24, 2008. Upon a determination that there was equity in the property, the parties agreed, "the court will be required to resolve the standing issue raised by [respondents]. The standing issue will be resolved by way of a motion for judgment on the pleadings." The parties further stipulated, "[i]f the court finds that [appellant] does not have standing and wants to substitute a revived [AAW], [respondents] will assert their statute of limitations defense which will require an evidentiary hearing unless the parties waive such hearing or proceed on stipulated facts or declarations."

On February 25, 2015, the court ruled that there was equity in the property. A hearing was set for June 3, 2015 to hear argument on a motion for judgment on the pleadings on the issue of standing. Respondents' motion was procedurally defective in that respondents failed to file a notice of motion and memorandum of points and authorities. On September 1, 2015, the motion for judgment on the pleadings was denied without prejudice.

On September 30, 2015, respondents filed a motion for judgment on the pleadings.<sup>1</sup> Respondents pointed out that AAW had purportedly filed an assignment of judgment on September 29, 2014. Respondents argued that because AAW had been suspended in the State of California since September 3, 2013, and remained suspended as

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<sup>1</sup> Appellant fails to provide a citation to the record suggesting that he objected to respondents' September 30, 2015 motion for judgment on the pleadings on the ground that it was an improper motion for reconsideration pursuant to Code of Civil Procedure section 1008. Furthermore, the first motion for judgment on the pleadings was denied without prejudice. For these reasons, we decline to address appellant's arguments that the September 30, 2015 motion for judgment on the pleadings was filed in violation of Code of Civil Procedure section 1008.

of September 10, 2015, it had no authority to transfer its judgment to appellant during its suspension.<sup>2</sup>

On November 5, 2015, the trial court granted respondents' motion for judgment on the pleadings without leave to amend. The court noted that there was no dispute that AAW was suspended in 2013. There was also no dispute that the notice of assignment was filed on September 29, 2014. Therefore, appellant lacked standing based on the respondents' proper collateral attack on the voidable assignment. At the time the trial court issued its decision, AAW remained suspended.

On November 24, 2015, appellant filed an ex parte application to substitute AAW as the plaintiff. Respondents opposed the application, attaching a record from the California Secretary of State indicating that as of November 20, 2015, AAW remained suspended. The application was denied.

On January 21, 2016, appellant filed a notice of certificate of revivor for AAW.

Notice of entry of judgment was filed on January 29, 2016, dismissing the action.

On February 3, 2016, appellant filed his notice of appeal.

## **DISCUSSION**

### **I. Standard of review**

The standard of review is the same for a motion for judgment on the pleadings as for a demurrer. (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989 (*Pang*).) Under this standard, all material facts that were properly pleaded are deemed true, but not contentions, deductions, or conclusions of fact or law. (*Ibid.*) We may also consider matters which may be judicially noticed. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) When a motion for judgment on the pleadings is granted, we must determine as a matter of law whether the complaint states facts sufficient to constitute a cause of action. (*Ibid.*)

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<sup>2</sup> Attached to respondents' motion was a certificate of status from the California Secretary of State indicating that AAW had been suspended in September 2013 and remained suspended.

Where, as here, leave to amend was not granted, we must determine whether the defect can be cured by amendment. If the defect can be cured, the trial court committed reversible error. The appellant bears the burden of proof on this issue. (*Pang, supra*, 79 Cal.App.4th at p. 989.)

## **II. Appellant had no standing to enforce the judgment**

AAW was the judgment creditor and therefore held the right to pursue the fraudulent transfer action against respondents. AAW went out of business, and was suspended in California from September 3, 2013, through December 31, 2015.

Revenue and Taxation Code section 23301 states that a suspended corporation may not exercise the rights, power, or privileges of a taxpayer. Consequently, during the time of its suspension, AAW did not have the power to prosecute or defend this action. (*Cal-Western Business Services, Inc. v. Corning Capital Group* (2013) 221 Cal.App.4th 304, 310 (*Cal-Western*).)

Civil Code section 954 permits the transfer of a cause of action. One common method of such transfer is an assignment. (*Essex Ins. Co. v. Five Star Dye House, Inc.* (2006) 38 Cal.4th 1252, 1259.) “A judgment creditor may assign the right represented by the judgment to a third person. [Citations.] In doing so, the judgment creditor assigns the debt upon which the judgment is based. [Citation.] Through such an assignment, the assignee ordinarily acquires all the rights and remedies possessed by the assignor for the enforcement of the debt, subject, however, to the defenses that the judgment debtor had against the assignor. [Citation.]” (*Great Western Bank v. Kong* (2001) 90 Cal.App.4th 28, 31-32.) This is consistent with the general rule that “[t]he assignee ‘stands in the shoes’ of the assignor, taking his rights and remedies, subject to *any defenses* which the *obligor* has against the assignor prior to notice of the assignment.’ [Citation.]” (*Johnson v. County of Fresno* (2003) 111 Cal.App.4th 1087, 1096, 4 Cal.Rptr.3d 475; see *Bliss v. California Cooperative Producers* (1947) 30 Cal.2d 240 (*Bliss*) [“an assignee of a chose in action is subject to all equities and defenses existing at or before the notice of the assignment”]; *Teater v. Good Hope Development Corp.* (1942) 55 Cal.App.2d 459, 462 [“an assignee of a chose in

action ordinarily acquires all of the rights and remedies possessed by the assignor for its enforcement, subject, however, to the defenses which may be urged against the assignor”].) This principle is also codified in Code of Civil Procedure section 368, which provides, in pertinent part, that “[i]n the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off, or other defense existing at the time of, or before, notice of the assignment.” Thus, where the assignor of a right to collect a judgment is a suspended corporation, the assignee is subject to the same defenses that could have been asserted against the assignor. (*Cal-Western, supra*, 221 Cal.App.4th at pp. 310-311.)

Under the undisputed facts, the purported assignment of judgment filed September 29, 2014, was ineffective due to AAW’s suspended status and appellant had no power to prosecute the action. The trial court properly determined that no valid assignment of judgment had occurred, therefore appellant had no standing to sue. Respondents’ motion for judgment on the pleadings was properly granted.

Appellant argues that September 29, 2014, was merely the date that the notice of assignment of judgment was filed. Appellant argues that we must take the pleadings as fact, and accept that the actual assignment was made at the time AAW closed its doors. Appellant argues that assignments of judgment need not be in writing, and that we must liberally construe the pleadings to assume that the actual assignment was undertaken during a time that AAW was not suspended and is therefore valid.

We disagree. Pursuant to the law discussed above, appellant’s rights were determined as of the time of the filing of the notice of assignment of judgment. (See, e.g., *Bliss, supra*, 30 Cal.2d at p. 250 [“an assignee of a chose in action is subject to all equities and defenses existing at or before the notice of the assignment”]; Code Civ. Proc., § 368 [“In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off, or other defense existing at the time of, or before, notice of the assignment”].) Appellant provides no authority for his position that his right to sue should be determined as of the alleged unspecified earlier date of the purported oral assignment.

We find that the trial court did not err in holding that appellant's right to enforce the judgment was properly determined at the date of the filing of the notice of assignment. On that date, AAW was a suspended corporation and had no power to prosecute the fraudulent transfer action. It also had no power to assign the judgment, therefore appellant could not, and did not, obtain standing to sue.<sup>3</sup>

### **III. The trial court did not err in denying leave to amend**

The trial court did not abuse its discretion in denying leave to amend. At the time the trial court granted the motion for judgment on the pleadings, the matter had been pending for over two years. During that time, AAW did not appear nor revive its suspended status. Appellant points to no evidence in the record at the time of the court's ruling that AAW was seeking to revive itself in order to ratify the assignment of judgment to appellant or substitute into the case. The trial court had sustained a demurrer on the issue of standing, and a motion for judgment on the pleadings on the same issue over a year later. Under the circumstances, the trial court was not required to allow AAW more time to rectify its corporate status and did not abuse its discretion in determining that appellant was not likely to successfully amend the pleadings to state a claim.<sup>4</sup>

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<sup>3</sup> Appellant takes issue with respondents' request for judicial notice, which attaches a copy of the filed notice of assignment and states that it proves the date of the assignment was September 29, 2014. In a variation on his first argument, appellant argues that this was the date of the filing of the notice, not the date of the actual assignment. Since we have determined that the date of the filing of the notice of assignment determines the parties' rights, we decline to address this argument. The unknown date of the purported actual assignment is irrelevant.

<sup>4</sup> We note that, after the trial court granted the motion for judgment on the pleadings without leave to amend, appellant filed an ex parte application to substitute AAW as plaintiff. The motion was denied. At the time appellant filed the ex parte application, AAW remained a suspended corporation. To the extent that appellant argues that respondents and the court failed to follow the parties' stipulation, we further note that the stipulation assumed that appellant would attempt to substitute a revived AAW. There is no evidence in the record that appellant ever attempted to substitute a revived AAW.

Appellant argues that the revival of corporate powers validates the corporation's earlier acts and permits it to proceed with the prosecution of a civil action. (*Peacock Hill Assoc. v. Peacock Lagoon Constr. Co.* (1972) 8 Cal.3d 369, 371-374.) In addition, a corporation is entitled to a reasonable continuance to take necessary steps to obtain reinstatement. (*Schwartz v. Magyar House, Inc.* (1959) 168 Cal.App.2d 182, 189 (*Magyar*); *Cadle Co. v. World Wide Hospitality Furniture, Inc.* (2006) 144 Cal.App.4th 504 (*Cadle*).) Appellant argues that the trial court ignored the law when it failed to give appellant time to substitute a revived AAW as plaintiff. However, the cases cited by appellant are distinguishable.

In *Magyar*, a corporation did not have the capacity to defend an action brought against it due to its suspended status. (*Magyar, supra*, 168 Cal.App.2d at pp. 184-185.) The corporation filed a motion for continuance in order to bring itself back to good standing and thus be able to defend the lawsuit. The motion was granted, and the corporation subsequently revived itself and defended the action. The plaintiff appealed, arguing in part that the corporation should not have been permitted to file a motion for continuance under the circumstances. (*Id.* at pp. 187-188.) The trial court's decision was affirmed. The Court of Appeal reasoned that even assuming it was improper for a suspended corporation to make any motion whatsoever, the trial court could nevertheless have granted the continuance on its own motion. (*Id.* at p. 189.) In contrast to *Magyar*, the suspended corporation was not a party to this lawsuit, and the record does not show a motion for continuance filed by the corporation. Because there is no motion for continuance at issue in this case, *Magyar* is irrelevant. Nor was the trial court required to make such a motion on its own after the corporation had ample time to revive itself during the pendency of the proceedings.

*Cadle* is also unhelpful to appellant. In *Cadle*, as in *Magyar*, the suspended corporation was a defendant in the lawsuit. On the first day of trial, the plaintiff made a motion to preclude the suspended corporation from defending the suit. The motion was granted, and judgment was entered against the corporation, despite its attorney's protests that he was taken by surprise and was unaware that the corporation had been suspended.



(*Cadle, supra*, 144 Cal.App.4th at p. 508.) The suspended corporation filed a notice of revivor within two days of trial. (*Id.* at p. 509.) Under those circumstances, the Court of Appeal determined that a brief continuance should have been granted. (*Id.* at p. 512.) Here, the suspended corporation is not a defendant, and there is no evidence that it was taken off guard by learning its suspended status the day of trial. While AAW filed a notice of revivor days before judgment was entered, this was after the trial court had sustained a demurrer, granted a motion for judgment on the pleadings, and denied an ex parte application to substitute the suspended corporation. There is no evidence that the corporation took prompt action to revive itself, as occurred in *Cadle*.

The record shows that appellant never requested a continuance. Nor did it file a notice of revivor until over two months after the motion for judgment on the pleadings had been granted. At that time, no request was made on behalf of AAW to intervene in the matter, nor was the trial court asked to reconsider any prior rulings. The trial court was not required to sua sponte undo its previous rulings. No error occurred.

#### **DISPOSITION**

The judgment is affirmed.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
ASHMANN-GERST